IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.6819 OF 2006

Mr. Dastgir Alam Mulla,
Age: 43, KL-5, Sector 3E,
Bldg.No.3, Room No.9,
CIDCO Colony, Kalamboli,
Navi Mumbai-410 208. .... Petitioner

- Versus -

1. Mysore Petrochemicals
   Limited, Plot No.T-1, Taloja
   Industrial Area, MIDC,
   Taloja 410 208,
   District Raigad,
   State of Maharashtra.

2. Mr. J.K. Sabu,
   Executive Director,
   Mysore Petrochemicals
   Limited, Plot No.T-1, Taloja
   Industrial Area, MIDC,
   Taloja 410 208,
   District Raigad.

3. Mr. G. Venkatram Reddy,
   Technical President,
   Mysore Petrochemicals
   Limited, Plot No.T-1, Taloja
   Industrial Area, MIDC,
   Taloja 410 208,
   District Raigad,
   State of Maharashtra.

4. Mr. A.A. Phadnis,
   Enquiry Officer,
   2, Devki Niwas,
   M.Karve Road, Vishnu
   Nagar, Dombivli(West).

5. I.G. Petro & Mysore
   Petrochemicals Limited
   Taloja Workmen’s Union,
   Plot No.T-1, Taloja
   Industrial Area, MIDC,
   Taloja 410 208,
   District Raigad,
   State of Maharashtra.

6. State of Maharashtra

7. Dy. Registrar under the
Trade Unions Act, 1926,
6th Floor, Commerce Centre,
Tardeo, Mumbai-400 034. .... Respondents

Sarvasri S.M. Dharap with Neel Helekar for
the Petitioner.

Sarvasri S.M. Oak with D.S. Nimbalkar for
the Respondent Nos.1, 2, 3 and 5.

Shri A.H. Palekar, Asst. Government Pleader,
for the Respondent Nos.6 and 7.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 22, 2006

ORAL JUDGMENT:

1. Heard. The petitioner challenges the order dated 14-8-2006 passed in Complaint (ULP) No.150 of 2006 by the Industrial Court, Thane whereby the application, filed by the petitioner seeking for direction to the respondents to allow the petitioner to be represented by an office bearer of the Trade Union during the course of the inquiry against the petitioner, has been dismissed.

2. Few facts relevant for the decision are that the petitioner joined the services in the respondent-company as a plant-operator on 16-11-1992. After having issued the order of suspension on 29-11-2004, a chargesheet was issued and the inquiry was initiated against the petitioner on 25-12-2004 by appointing Shri D.S. Nimbalkar, a practising Advocate, as the management’s

representative. The petitioner sought to appoint Shri Patki, Vice-President of the Trade Union of which the petitioner is the member, to be his defence representative in the said inquiry. The said request of the petitioner was rejected by the inquiry officer on the ground that the Vice-President is not empowered to represent workmen in terms of the Constitution of the Trade Union to which the petitioner belongs to. The petitioner thereupon filed Complaint (ULP) No.112 of 2005 wherein interim relief came to be rejected and which was sought to be challenged by way of Writ Petition No.3307 of 2005. However, the same was withdrawn in March, 2005. Thereupon the Trade Union proceeded to amend its Constitution whereby Clause 11(B-A) was sought to be amended by including two posts for Vice-President in the managing committee of the Trade Union and the same was effected by passing necessary resolution in that regard in the general body meeting of the Trade Union held on 23-1-2006. The amendment which was sought to be carried out in terms of the resolution was forwarded to the Registrar of the Trade Unions, Mumbai under the letter dated 27-2-2006. Consequent thereto, the petitioner again moved an application before the inquiry officer on 11-3-2006 seeking to appoint the Vice-President of the managing committee of the Trade Union to represent the petitioner in the inquiry proceedings. However, by order dated

8-4-2006 the inquiry officer rejected the said request. Thereupon, another application was filed by the petitioner on 29-4-2006 requesting the inquiry officer to allow another Vice-President Shri Pagade to represent the petitioner in the course of the inquiry proceedings. The same was also disallowed by the inquiry officer on 4-5-2006. The petitioner thereafter filed Complaint (ULP) No.150 of 2006 before the Industrial Court, Thane wherein the application for interim relief was also filed for direction to the respondent to allow the petitioner to be represented by any member of the managing committee of the Union. After hearing the parties, the same came to be rejected by the impugned order dated 14-8-2006.

3. The learned counsel appearing for the petitioner, while assailing the impugned order, submitted that once the provisions of the Standing Orders comprised under Clause 25(4) of Schedule-I thereto clearly entitles the workmen to be represented by any office bearer of the Trade Union and since the Constitution of the Trade Union of which the petitioner is the member, provides the managing committee to include two Vice-Presidents and as the petitioner had requested the inquiry officer to allow the petitioner to be represented by one of the Vice-Presidents, there was a clear denial of the statutory right to the petitioner and in spite of the

fact that it was brought to the notice of the Industrial Court, the latter clearly failed to exercise its jurisdiction to protect the interest of the workman and thereby gave an opportunity to the employer to indulge in unfair labour practices. Drawing attention to the amendment which has been carried out to the Constitution of the Trade Union, he submitted that the fact that such amendment had been carried out by holding necessary general body meeting, that such an amendment had been registered and that it provided for the managing committee to include two Vice-Presidents, were not in dispute and therefore taking into consideration the provisions of Clause 25(4) of Schedule-I of the Standing Orders, the Industrial Court could not have refused the relief asked for. Denial of the relief asked for has virtually resulted in denial of opportunity to exercise the statutory right by the workman. He has also drawn attention to the Notification No.1781/48, dated 26-5-1952 while contending that the said Registrar of Trade Unions is also a Central Registrar of Trade Unions in cases where the jurisdiction of the Trade Unions extends beyond one State and further that the Registrar of Trade Unions for the State Trade Unions is the one where the head-office of the Trade Union exists and it is not in dispute that the head-office of the Trade Union of which the petitioner is the member, is situated in Mumbai. He has also relied upon the decision in the

matter of **Indian Oxygen Ltd. v. Their Workmen,** reported in AIR 1969 SC 306 as well as **The Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others,** reported in AIR 1983 SC 109.

4. On the other hand, the learned counsel appearing for the respondents submitted that in terms of the provisions of the Central Trade Unions Regulations, 1938, the provisions of the said Regulations would apply to the Trade Unions whose activities are not confined to one State and the provisions of the Bombay Trade Unions Regulations, 1927 would apply to those Trade Unions whose activities are confined to the State of Maharashtra, and being so, the alteration in the Constitution of the Trade Union of which the petitioner is the member and which is having its activities not only in the State of Maharashtra but beyond the State of Maharashtra, the registration of such alteration or amendment to its Constitution has to be done with the Registrar appointed by the Central Government and not by the State Government and in the absence of such registration, the amendment does not come into force. Attention is drawn to Clause 12 of the Bombay Trade Unions Regulations as well as Clause 9 of the Central Trade Unions Regulations in that regard. It is also sought to be contended that the letter dated 27-2-2006

on which reliance is sought to be placed by the petitioner while contending the registration of the amendment to the Constitution of Trade Union, it is sought to be contended on behalf of the respondents that the same bears the seal of the State Government and therefore apparently discloses the registration with the Registrar of Trade Unions appointed by the State Government and not by the Central Government and therefore the alleged amendment to the Constitution cannot be said to have come into force in the absence of registration thereof with the Registrar of Trade Unions appointed by the Central Government.

5. The Section 3(1) of the Trade Unions Act, 1926, hereinafter called as "the said Act", provides that the appropriate Government shall appoint a person to be the Registrar of Trade Unions for each State. The Section 2 of the said Act provides that the term "appropriate Government" under the said Act means, in relation to Trade Unions whose objects are not confined to one State, the Central Government, and in relation to other Trade Unions, the State Government.

6. The sub-clause (1) of the Clause 9 of the Central Trade Unions Regulations provides that on receipt of the copy of the alteration made in the rules of the Trade Union under Section 28(3) of the said Act, the

Registrar, unless he has reason to believe that the alteration has not been made in the manner provided by the rules of the Trade Union, shall register the alteration in a register to be maintained for the said purpose and shall notify the fact that he has done so to the Secretary of the Trade Union. Similarly, Clause 12(1) of the Bombay Trade Unions Regulations provides that on receipt of copy of any alteration made in the rules of a Trade Union under sub-section (3) of Section 28, the Registrar shall, unless has reason to believe that the alteration has not been made in the manner provided by the rules of the Trade Union or unless the alteration is not, in accordance with the provisions of the Act, register the alteration in a register to be maintained for the said purpose and shall notify the fact that he has done so to the Secretary of the Trade Union.

7. The Notification No.1781/48, dated 26-5-1952, which was published in the Government Gazette dated 5-6-1952, Part IV-A at page 563 reads thus:

> "Trade Unions not confined to Bombay - Notification. Notification No.1781/48, dated 26th May 1952.
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> Whereas by the Government of

India, Ministry of Labour, Notification No.L.R.26(74), dated the 26th February 1952, issued in exercise of the powers conferred by clause (1) of Article 253 of the Constitution, the President has entrusted inter alia to the Government of each Part A State, with its consent, the functions of the Central Government under the Indian Trade Unions Act, 1926 (XVI of 1926), in relation to trade unions whose objects are not confined to, and whose head office is situated in, that State;

Now, therefore, in exercise of the functions of the Central Government under section 3 of the said Act, so entrusted, and in supersession of the Government Notification in the Political and Services Department, No.3841/34, dated the 19th May 1941, the Government of Bombay is pleased to appoint the Registrar of Trade Unions for the State of Bombay to be the Registrar of Trade Unions also in relation to trade unions whose objects are not confined to, and whose head office is situated in, the

State of Bombay."

Plain reading of the above Notification would disclose that the Registrar of Trade Unions for the State of Bombay shall be the Registrar of Trade Unions in relation to those Trade Unions whose objects are not confined only to the State of Bombay. In other words, the Registrar of Trade Unions at Mumbai, appointed by the State Government, would also function as the Registrar in relation to the Trade Unions whose jurisdiction is not confined merely to the State of Maharashtra. Taking into consideration the provisions of Section 3 r/w Section 2 of the said Act, therefore, the Registrar of Trade Unions at Mumbai is functioning as the Registrar of Trade Unions having the field of operation not only in the State of Maharashtra but also in the other States, provided, however, that the Union has its head-office in the State of Maharashtra.

8. The contention that the communication dated 27-2-2006 bears the Government seal of the State Government and, therefore, the registration is only with the Registrar appointed by the State Government is totally devoid of substance. While ascertaining the exercise of power by any authority, it is necessary to take into consideration the provisions of law which extends the power to such authority to perform the

function which is revealed to have been performed. If the document discloses performance of a particular function, merely because it wrongly refers to a section of a particular statute or merely because it fails to have the necessary seal of the particular department of the Government, that itself would not render the exercise of power to be invalid or unenforceable in law. Once the Registrar of Trade Unions appointed by the State Government is lawfully allowed to function as the Registrar appointed by the Central Government and has recorded the amendment to the Constitution of the Trade Union of which the petitioner is the member, merely because such communication does not disclose the seal of the Central Government, that itself will not nullify the effect of such communication. Besides, it is to be noted that there was no lapse on the part of the Registrar concerned in not affixing the seal of the Central Government. Plain reading of the Notification quoted above would disclose that the powers exercisable by the Registrar to be appointed by the Central Government in terms of Section 3 r/w Section 2 of the said Act have been bestowed upon the office of the Registrar of Trade Unions appointed by the State Government and therefore for all purposes he would be the Registrar of Trade Unions appointed by the Central Government having been authorised under the specific Notification to act also as the Registrar of Trade

Unions on behalf of the Central Government. Undoubtedly, therefore, the said communication has to be construed as the one by a Registrar of the Trade Unions appointed by the Central Government. Mere use of the seal of the State Government would not nullify the effect of the amendment to the Constitution of the Trade Union of which the petitioner is the member. Besides, the records undisputedly reveal that majority of the members of the Trade Union of which the petitioner is the member has approved the reconstitution of the framework of the managing committee of the concerned Trade Union and being so, it is not for the management or the employer to object to the same.

9. The Standing Orders, by which the parties are governed, comprise of Clause 25(4) in Schedule-I thereof which reads thus:

> "25(4) A workman against whom an inquiry is proposed to be held shall be given a charge-sheet clearly setting forth the circumstances appearing against him and requiring his explanation. He shall be permitted to appear himself for defending him or shall be permitted to be defended by a workman working in the same department as himself or by any

> office-bearer of a trade union of which he is a member. Except for reasons to be recorded in writing by the officer holding the inquiry, the workman shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence the charge rest. A concise summary of the evidence led on either side and the workman's plea shall be recorded."

10. The said Clause apparently discloses that it is for the workman to choose his representative in the departmental inquiry initiated by the management, albeit, the representative should be either another workman or the member of the Trade Union of which the workman is a member. Likes or dislikes of the management in relation to the representative of the workman are absolutely irrelevant. Whether the workman chooses the President or the Secretary or the Vice-President, it would depend upon the Constitution of the Trade Union of which the workman is a member. Once it is clear that the Constitution of the Union, of which the petitioner is a member, empowers the petitioner to have him represented by the Vice-President of the Trade Union in an inquiry initiated against him by the management, the latter cannot have any say in that

regard. Of course, there can be genuine reason for objecting to a particular person to be a representative of the workman, such as when a person who is known for creating obstruction to the inquiry proceedings or whose presence would make the inquiry officer impossible to conduct the proceedings. But merely because the management does not like or want a particular person to represent the workman, that by itself cannot be a justification for the inquiry officer to reject the representation of the workman by such a person.

11. As rightly submitted by the learned counsel for the petitioner, the Industrial Court does not appear to have applied its mind to any of the provisions of law nor has taken into consideration its obligation and jurisdiction while dealing with the matter where the workman had approached the Industrial Court with the grievance about failure on the part of the inquiry officer even to observe the basic principles of natural justice and where the statutory right assured to the workman had been sought to be denied by the management. It is pertinent to note that the inquiry against the petitioner had commenced in December, 2004 and it has not proceeded any further and it is lingering at the stage where the issue as to who should represent the workman still remains to be decided. Once it was brought to the notice of the Industrial Court that there

had been amendment to the Constitution of the Trade Union by a majority of the workmen which permitted the constitution of the managing committee to include two Vice-Presidents and the petitioner had sought leave of the inquiry officer to allow him to be represented by one of the Vice-Presidents, one fails to understand how the Industrial Court could have rejected such a genuine plea on behalf of the workman. The inquiry proceedings are not supposed to be a mere farce but it has to be essentially to ascertain whether the workman is guilty of misconduct alleged by the employer. The employee, therefore, is entitled for a fair inquiry and sufficient opportunity to defend his rights in answer to the accusations made against him. It is not for the management to decide about his representative and it should be left to the workman and more particularly when the statutory provisions comprised under Clause 25(4) of Schedule-I of the Standing Orders clearly provide for the same. The Industrial Court having totally ignored all these things, has clearly failed to exercise its jurisdiction in the manner it was required to be exercised. The Apex Court in **Indian Oxygen's** case (supra) has clearly held that once the Registrar is satisfied about the amendment to be in accordance with the rules of the Trade Union and they do not affect any of the statutory provisions, same are to be registered and to be notified to the concerned Trade Union. In the

case in hand, as already stated above, intimation was already made in February last and it was thereafter that the petitioner approached the Industrial Tribunal for necessary direction in terms of the amendment carried out to the Constitution r/w his entitlement under Clause 25(4) of Schedule-I of the Standing Orders. The Tribunal totally erred in denying the petitioner his right in this regard.

12. In **Dilipkumar Nadkarni's** case (supra) the Apex Court had held that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner, the refusal to grant his request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated. In the case in hand, it is not in dispute that a practising Advocate has been appointed as the management's representative in the inquiry. This itself would have justified the Industrial Tribunal, leaving aside the provisions of Schedule-I Clause 25(4), to grant liberty to the workman to be represented by a competent person. Certainly, when the management is represented by a legally trained mind, to deny even such an opportunity to the workman would virtually result in denial of justice to the workman.

13. In the result, therefore, the petition succeeds. The impugned order is hereby set aside and the petitioner is permitted to be represented by any of the member of the managing committee of the Trade Union of which he is the member. The rule is made absolute in above terms with costs.

(R.M.S. Khandeparkar, J.)

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